the sale of a unit in a housing project which is governed by the Housing Developers Rules 1985 which came into operation on January 4, 1985. In respect of such a sale the agreement for sale will be in Form E as prescribed by rule 12(2) of the 1985 Rules. The provisions of clause 19 of the said Form of Agreement, which are entirely reproduced below, would govern and resolve the difficulties raised in this case:

"19.(1) No error or mis-statement as to the description of the area of the building unit shall annul the sale or entitle the Purchaser to be discharged from the purchase.

(2) Any error or mis-statement as to the description of the area of the building unit shall give the Purchaser an entitlement to an adjustment of the purchase price in accordance with the provisions of this clause.

(3) If on completion of resurvey by the Government it is found that the area of the building unit ascertained by such resurvey is less than the area mentioned in the First Schedule hereto ('the scheduled area'), there shall be an adjustment of the purchase price for the difference (if any) in excess of three (3) per cent of the scheduled area calculated at the rate the Purchaser paid for each square metre of the building unit.

(4) The Vendor shall not be entitled to any adjustment of the purchase price if the area of the building unit ascertained by the Government resurvey exceeds the scheduled area."

Claim allowed.

Solicitors: *Ramdas & Wong; Lee & Lee.*

PUBLIC PROSECUTOR v. TEO ENG CHAN & ORS.

[O.Cr.J. (Punch Coomaraswamy J.) November 3, 1987]

[Singapore – Criminal Case No. 30 of 1986]

Criminal Law – Penal Code, s.376(2) – Aggravated rape – Accused's claim of reasonable belief that woman consented – Not a defence under the Penal Code – Mistake of fact – Must be shown in the light of ss. 26, 44, 52, 79 & 90 of the Penal Code.

Evidence – Burden on accused to show a general exception giving him a defence – Evidence Act (Cap. 97), s.107 – Burden discharged on a balance of probabilities.

Criminal Procedure – Joint trial – Evidence prejudicial to one accused – Relevant to defence of a co-accused and desired by him – Admissible.

Evidence – Corroboration – Evidence Act (Cap. 97), s.159 – "At or about the time when the fact took place" – Not limited by hours or days but by "first reasonable opportunity" or "as speedily as could be expected."

Evidence – Former statement – Admissibility under Evidence Act (Cap. 97), s.159 – Corroborative and not merely showing consistency as in English law.

Held: (1) in a joint trial, evidence which may be prejudicial to one accused can be received if it is relevant to the defence of a co-accused and desired by him;

(2) a former statement by a witness, complying with the requirements of section 159 of the Evidence Act, is corroborative of the witness and goes beyond showing consistency as it does in English law;

(3) the words "at or about the time when the fact took place" in section 159 of the Evidence Act do not refer to hours or days. The words are limited by the terms "first reasonable opportunity" or "as speedily as could be expected";

(4) on a charge of rape under the Penal Code, an accused's belief that the woman consented is, as such, no defence. The English case of *D.P.P.* v. *Morgan*[4] has no application under the Penal Code;

(5) "reasonable cause to believe that the woman consented" constitutes, under the Penal Code, a defence of "mistake of fact" under section 79 and must be examined under that section and other provisions of the Penal Code;

(6) what is not "consent" is defined in section 90. Where an accused claims he made a mistake of fact believing the woman consented, his claim must be examined, besides section 79, in the light of section 90 and the explanations of the following terms in the Penal Code: (a) "reason to believe" in section 26; (b) "injury" in section 44; and (c) "good faith" in section 52;

(7) section 79 ("mistake of fact") comes under Chapter IV ("General Exceptions") of the Penal Code. By section 107 of the Evidence Act, the burden of proving the existence of circumstances bringing the case within a general exception is on the accused and the court shall presume the absence of such circumstances. The burden is discharged on a balance of probabilities;

(8) where, on a charge of rape, there is no allegation that physical force was used, the absence of injury on the complainant is immaterial;

(9) the word "hurt" in section 376(2) is to be given its ordinary lay meaning. It is not limited by section 319 in which the word is defined not for purposes of the whole Code but only in relation to offences where "causing hurt" is the offence itself or an ingredient in an offence.

Cases referred to:

(1) *R.* v. *Miller* [1952] 2 All E.R. 667; 36 Cr. App. Rep. 169; 116 J.P. 533.

(2) *Lowery* v. *R.* [1974] A.C. 85; [1973] 3 All E.R. 662; [1973] 3 W.L.R. 235; 58 Cr. App. Rep. 35; 117 Sol. Jo. 583.

(3) *Haw Tua Tau* v. *Public Prosecutor* [1981] 2 M.L.J. 49; [1982] A.C. 136; [1981] 3 All E.R. 14; [1981] 3 W.L.R. 395; 125 Sol. Jo. 497.

(4) *D.P.P.* v. *Morgan* [1976] A.C. 182; [1975] 2 All E.R. 347; [1975] 2 W.L.R. 923; 61 Cr. App. Rep. 136; 119 Sol. Jo. 319.

(5) *Public Prosecutor* v. *Zainal Abidin bin Ismail & Ors.* [1987] 2 M.L.J. 741.
(6) *Chiu Nang Hong* v. *Public Prosecutor* [1965] 1 M.L.J. 40; [1964] 1 W.L.R. 1279; 108 Sol. Jo. 818.
(7) *R.* v. *Cummings* [1948] 1 All E.R. 551; 92 Sol. Jo. 284.

This report is confined to certain points of law in the judgment of Coomaraswamy J. The facts relating to these points of law are taken from his judgment.

The four accused were, with the consent of each, jointly tried for aggravated rape under section 376(2) of the Penal Code (Cap. 224). Teo, Ng and Yap, respectively the first, third and fourth accused, faced one charge each. Sim, the second accused, faced two charges.

The alleged offences took place on Wednesday, September 4, 1985. The complainant, referred to by the judge as "Kay", was 16 years and 10 months old at the time and lived in a kampong house on a road off the 18-km stone on Woodlands Road. She worked at a snack bar in the Bukit Timah Shopping Centre near the 12-km stone. Her duties involved serving customers as well as taking food for delivery to other places. Her working hours were 10.30 am to 7.30 pm and Monday was her off-day.

Of the accused, she first knew Teo to whom she gave her telephone number and nickname after he pestered her during work on Sunday, September 1, 1985, their first meeting. He called her that night and invited her to a film show the next day, her off-day. After the film show, he took her to the nearby flat of a friend, Ah Boon. As there were people playing mahjong in the sitting room and as it was noisy with music, he asked her to go to a bedroom as he had something to tell her.

In the bedroom, he told her he wanted to be her steady friend and then pushed her onto a bed. They were on the bed for two spells of 15 minutes each when he lay on the half side of her body. Teo stroked one of her breasts by lifting her brassiere and also tried to pull down her panties. She resisted these efforts as well as his efforts to kiss her. He managed to kiss her neck and caused a love-bite. She was not aware of this as she was then resisting his attempts to pull down her panties. She stood up to pull her panties up. Her efforts to leave the room were obstructed by Teo. He then asked her to sit on the bed for a talk. When she did so, he used force to push her on the bed. This led to the second spell but he did not succeed in any advances. She showed her anger whereupon Teo got up and left the bedroom. The two of them then went to their respective homes.

The next day, September 3, 1985, Ng met her for the first time and teased her about the love-bite on her neck. On September 4, 1985, when on her way home after work, Ng met her. He asked her where she was going and on being told that she was going home, he told her that it was too early and that he had a friend who could give her a lift. In the next half hour or so, at various times, one or more of the accused met her and the invitation that she accept a lift home was repeated, rejected but finally accepted. Sim, whose lorry was to be used, had also told her that her home was on his own way home. Her first-ever meeting with Sim and Yap was that evening.

The five persons ended up in the cabin of the lorry which Sim drove ostensibly towards Kay's home. After travelling about 2½ km but well before Kay's home, Ng requested Sim to make a U-turn. Ng said he wanted to visit a friend whereupon Kay requested that she be sent home first. This was rejected. Having made the U-turn, Sim drove the lorry along a muddy road and ended up in a deserted quarry. There were no houses around and the terrain was uneven with crevices at the edge of the quarry, and high ground around. Kay out of fear was crying and indicated that she wanted to go home. All except Teo alighted from the cabin in various stages. Sim returned to the cabin and was in conversation with Teo. He then got down from the cabin and told Kay to go into the cabin as Teo had something to say to her. On her failure to respond, Sim told her that if she wanted to go home, she had to go up and talk to Teo.

She did and repeated to Teo her desire to go home but he said he would send her home after he had sex with her. She declined, whereupon he responded by threatening that he would call the others up into the cabin. He then got down and talked to the others. Sim then boarded the lorry and asked Kay for sex but she refused. He abused her in Hokkien and upon her crying threatened to beat her if she continued crying. She declined his request that she strip and he threatened to ask the others to come up to strip her completely. He also threatened to beat her and threatened to take her trousers off himself. Out of fright, she undid the side fasteners and pulled the zip down. She then pulled the trousers down half-way. Her explanation was that besides fear of Sim, she was afraid that if he took her trousers off forcibly, the trousers might become damaged and she would have no trousers to go home in. Sim then pulled her trousers, shoes and panties off and put them on the floorboard. She refused Sim's request that she lie down but after his threat to call the others up, she did so over the three single front seats of the lorry.

He then forced his penis into her vagina and she cried and screamed with pain. He did not complete the act but got up and left the cabin.

Ng then went into the cabin and made similar threats and had sex with her. After he left the cabin, Sim came up again, pushed her down, made threats and had sex with her. After this, Teo boarded the cabin, abused her, threatened to beat her and to push her down if she refused. He then had sex with her.

Yap was called by the others to board the cabin. He in fact had to be helped up. Disregarding her pleas to spare her and not to have sex with her, he did so but before he completed the act, Sim boarded the cabin, turned on the light whereupon Yap withdrew his penis and left the cabin. The men then boarded the cabin and Sim drove to the main road. Sim sprayed some perfume on her T-shirt, telling her it would prevent her mother detecting any male odour on her. Against Kay's wishes, instead of sending her home, Sim drove back to Bukit Timah Village where he dropped the other three men and after that took her home.

On reaching home, she kept silent when asked many questions by her mother. After a bath, she went to bed. She had a nightmare and became conscious of the risk of pregnancy.

At about 9.45 am the next morning, she left home without telling her mother anything. She said she was not close to her mother and sisters. She went to a clinic in Bukit Timah Shopping Centre and asked the nurse for contraceptive pills and was referred to a lady doctor, Dr. Chua. She was full of tears when she entered Dr. Chua's room. She saw Dr. Chua and told her in Mandarin that she had been gang-raped. She also gave details of what transpired. When Dr. Chua asked her if she would like to make a police report, she said she did not know how to go about doing so. Dr. Chua then offered her a note but Kay was told it was up to her whether she wanted to make a report or not. Kay was not subjected to a detailed examination of her private parts by Dr. Chua because the doctor did not have the facilities for a proper examination and in any event felt that Kay should be examined by a specialist in a hospital. Kay then went to the Bukit Timah Police Station with Dr. Chua's note and was referred to Tanglin Police Station where investigations into her allegations commenced with an entry in the station diary.

Teo, Ng and Yap, after being dropped by Sim at Bukit Timah Shopping Centre, met a friend with whom they had something to eat at a stall. One or more of them in the presence of the others told his friend about the events of the evening. Kay was said to have screamed and cried, struggled and put up a little resistance.

Prior to the evening of September 4, 1985, Teo had told the other three that he had sex with Kay previously. In his evidence, he frankly acknowledged that this was a lie and that he "bluffed" them. At around 7.00 pm that day, Teo, Sim and Ng had discussed the question of taking Kay to the quarry. This was obviously for the purposes of sex.

According to the other three accused, Teo had told them that Kay had agreed to have sex with each of them and all she wanted to be sure was that she was given contraceptive pills to prevent her becoming pregnant.

Each of the accused admitted sex with Kay but denied that it was without Kay's consent. If it was with her consent, each denied that the consent was obtained by putting her in fear of hurt. It was argued that the lack of physical injury to Kay (other than tears to her hymen) showed consent. Each also denied putting Kay in fear of hurt to herself to commit or to facilitate sexual intercourse. Each accused, other than Teo, claimed that he had reasonable cause to believe that Kay consented. This was by virtue of Teo telling the others that he had previously had sex with Kay and that all she wanted was contraceptive pills to ensure she would not get pregnant.

CRIMINAL TRIAL.

Ang Sin Teck (Deputy Public Prosecutor) for the Prosecution.

First accused in person.

Chellappan Joseph for second accused.

Peter Cuthbert Low for third accused.

Joe Chellam for fourth accused.

R. Pala Krishnan and *Wee Pan Lee, amici curiae.*

Cur. Adv. Vult.

Coomaraswamy J.: At the start of the trial, each of you consented to being jointly tried with the other three on the charges respectively against each. The charges against the four of you relate to events on September 4, 1985, and involved the girl who at that time was 16 years and 10 months. Each of you know who she is. For today's purposes, I will refer to her as 'Kay.'

(Each of the four accused is charged in identical terms that "[you] on or about September 4, 1985 between 8.30 pm and 9.10 pm at the site of Singapore Granite Quarries Limited, Chia Eng Say Road, Singapore, committed rape on 'Kay' having put her in fear of hurt to herself and you have thereby committed an offence punishable under section 376(2) of the Penal Code ... Chapter 224 of the 1985 Revised Edition." Sim faces an additional charge which differs from that quoted only in respect of time, the charge specifying "at about 8.30 pm.")

The material parts of section 376(2) read:

> "Whoever, in order to commit or facilitate the commission of an offence of rape against any woman –
>
> (a) ...
>
> (b) puts her in fear of ... hurt to herself ..., shall be punished ... [and the punishment specified has a minimum term of eight years and a maximum of 20 years of imprisonment and caning of not less than twelve strokes] ..."

I was of the view that the evidence of what transpired in the flat could possibly be prejudicial to Teo, not relevant to the charges the accused faced and therefore inadmissible but counsel for the other three accused (unlike the prosecution) wanted the evidence in. They said it supported the case of their respective clients and that it was essential to their respective defences. Counsel for Sim described it as going to the root of Sim's defence.

As Teo was unrepresented, the Law Society at my request sent two counsel, Mr. R. Pala Krishnan and Mr. Wee Pan Lee, to argue as *amici curiae* for Teo on the question of admissibility of this evidence.

There is no provision in the Evidence Act dealing with the point before me and I sought guidance from cases in other common law jurisdictions. In *R.* v. *Miller*[1] Devlin J. allowed an accused's counsel to cross-examine a prosecution witness

although the evidence forthcoming showed that the co-accused had a previous conviction. In *Lowery* v. *R.*,[2] the Judicial Committee upheld a decision of the Supreme Court of Victoria allowing evidence prejudicial to one accused to be tendered by a co-accused as it was essential to the defence of the accused tendering the evidence. Except for section 56, there is nothing in the Evidence Act against the applicability of these two decisions in Singapore.

It will be useful for me to quote from Devlin J. in *Miller*. He said that it was the duty of defence counsel "to adduce any evidence which is relevant to his own case and assists his client, whether or not it prejudices anyone else" (at p. 669A). He then went on at p. 669C:

"to make clear how far my ruling goes. First, it does not open the field to any question of this kind by counsel of an accused person against the character of another accused. It is admissible in the present case because it happens to be relevant. ... Secondly, while counsel for the defence is not bound by the same considerations of restraint that would affect counsel for the prosecution in such a matter, care ought to be taken not to go any further than is strictly necessary for the proof of the relevant point on which the defence desires to rely. In such a matter the court is very much in the hands of counsel. I have indicated that at this stage, proof of where Harris [one of the accused] was at a given period during the conspiracy appears to me to have relevance, but I think that counsel for the defence ought to follow, so far as possible in the very different circumstances of appearing for the defence, the same restraint as counsel for the prosecution would, and ought not to introduce material of this sort further than is necessary or unless it is strictly required for the purpose of his case. Thirdly, I think that any question of this sort that is being asked by counsel for one accused that will affect the other accused ought to be communicated to counsel for the other accused in advance, so that he may consider whether he desires to take any objection to it."

As for section 56 of the Evidence Act, I wish to make two observations. Justice requires that the interests of his three co-accused override that of Teo. Further, the interest of Teo can be preserved and justice done by the exclusion from my mind of this evidence insofar as it went to show disposition or propensity on Teo's part.

After hearing argument, I decided, guided by the cases of *Miller* and *Lowery*, and what I said in the previous paragraph, to admit the evidence after warning myself that I will not permit the evidence to have any influence on me as far as Teo was concerned to the extent that it showed previous bad conduct, propensity, disposition or that he is the sort of person likely to commit the offence or that it showed a previous attempt by him to have sexual intercourse with Kay or that he had previously indulged in familiarities with her.

At the end of the prosecution case, I had no hesitation in calling upon each of the accused for his defence. In my view, the prosecution case went much further than the minimum requirements laid down by the Judicial Committee in *Haw Tua Tau* v. *Public Prosecutor*.[3]

The offence on which each was charged is committed by an accused if:

(i) he had sexual intercourse with Kay (section 375 Penal Code);

(ii) that this was without Kay's consent or, if it was with her consent, the consent was obtained by putting her in fear of hurt (section 375(b) and (c)); and

(iii) that he put her in fear of hurt to herself in order to facilitate what he did under (i) and (ii) above (section 376(2)).

On element (i), I had no hesitation in believing Kay and her evidence, not only on my assessment of her credibility but also because this was not challenged by any of the accused when each respectively cross-examined Kay. Further, in each of their statements to the police, sexual intercourse was admitted. She was challenged only on elements (ii) and (iii) and I have already adverted to her evidence on these elements.

Each of the four accused decided to take the witness box and give evidence on affirmation.

[Having surveyed the evidence] I will now turn to the law and to my findings.

In assessing the evidence on each charge against each accused, I was conscious throughout the trial that this was a joint trial, not a collective trial. At all times, I took care to ensure that the evidence on each charge against each one of the accused must be considered separately and distinctly from the evidence against the others.

I have indicated what the ingredients are of the offence with which the accused are being charged. The first element, sexual intercourse, was admitted by each accused. During submissions in the course of the prosecution case and at the end of the case for the defence, it was clear that the defence of each accused represented by counsel

was that Kay consented but if she did not, each had reason to believe that she consented. For this, reliance was placed on the English case of *D.P.P.* v. *Morgan*[3] where the House of Lords, by a majority of three to two, held that if an accused in fact believed that the woman had consented, he could not be found guilty of rape, whether or not that belief was based on reasonable grounds. Counsel placed heavy reliance on the decision of the learned Chief Justice, Dato Sir Denys Roberts, sitting as a trial judge in Brunei Darussalam in the case of *Public Prosecutor* v. *Zainal Abidin bin Ismail & Ors.*[5] The Chief Justice applied the *Morgan* principle in this case of rape against the accused. Counsel before me relied upon the case of *Zainal Abidin* because the Penal Code of Brunei is, with differences immaterial for present purposes, similar to ours. Section 375 is identical in the two Penal Codes. They therefore argued that I should follow the decision in *Zainal Abidin*.

In my view, the law on consent and mistake of fact are contained in the Penal Code itself Under Chapter IV dealing with exceptions, consent is defined negatively in section 90(a). In the light of the defence taken, this provision is applicable to the present case. Under this provision, consent is not consent if given by a person under fear of injury and if the person doing the act knows or has reason to believe that such consent was given in consequence of such fear.

For a person to have "reason to believe" a thing, section 26 of the Penal Code provides that he does so only if he has sufficient cause to believe that thing. The word "injury" which appears in section 90(a) is defined in section 44 as any harm whatever illegally caused to a person in body, mind, reputation or property. The word "mind" needs emphasis in this case.

On the facts before me, I find that Kay did not consent to any of the four accused having sexual intercourse with her in the cabin of the lorry at the quarry. As stated before, I found her to be a credible witness. The surrounding circumstances show that she is extremely unlikely to have consented. On Monday, September 2, she put up strenuous resistance and successfully prevented Teo from having sexual intercourse with her or of making major advances preliminary to sexual intercourse with her on a bed in the privacy of a bedroom in a Beauty World Centre flat. Not merely that, her conduct was such that except for her breast being caressed and her panties being pulled down a short distance, she was able for half an hour to resist any further advances towards sexual intercourse by a single man, Teo, with no other males around. I find it impossible to believe that a girl who did this on Monday could, two days later, consent to four persons, the first of whom was Sim, a total stranger, having sex with her across three seats in the cabin of a lorry in a dark and deserted quarry. Any contrary view goes against the grain of logic and common sense. Despite what each of the four accused said in evidence, I have little hesitation in believing Kay on the issue of consent.

In their evidence, Teo, Sim and Ng each said that Kay's fear of pregnancy was allayed when each said he would get her contraceptive pills and that this led her to submit. The provision of these pills was also one of the subjects of their conversation when two or more of them were outside the lorry. Sim's evidence was that Kay repeated the request for contraceptive pills when they were alone in the lorry on the way to Kay's home. Teo was free for three full days after September 4. Sim was free for eight full days. Ng was free for ten full days. Not one of them gave evidence that during these respective periods, they made efforts to get the pills or to provide them to Kay. It must also be remembered each knew where she worked. Each also had her home telephone number. I totally disbelieve the evidence of each when he said that Kay's only fear was pregnancy and that she submitted when told or after she was informed that she would be provided with contraceptive pills. The evidence of each on this is a pure figment of their respective imaginations.

There is every justification for saying that if she appeared to any one of the accused to consent, that consent was negatived by fear of injury to mind, if not to body. There was no consent as required by the provisions of the Code.

The next question for me to consider is whether there was a mistake of fact in the minds of the accused persons when they presumed that she consented. The law on this is contained in section 79 of the Penal Code which provides that "nothing is an offence which is done by any person ... who by reason of a mistake of fact ... in good faith believes himself to be justified by law, in doing it." Sex with a woman over 14 years with her consent is justified by law, incest aside.

"Good faith" is further defined by section 52 of the Penal Code which reads: "Nothing is said to be done or believed in good faith which is done or believed without due care and attention."

In view of these specific provisions in our law, the majority decision of the House of Lords in *Morgan* does not, in my humble view, have any application in Singapore. There is also nothing in the transcript of Dato Sir Denys Roberts' decision in *Zainal Abidin's* case that he was referred to the provisions of the Penal Code to which I have just referred and will hereafter refer.

Section 79 of the Penal Code appears in Chapter IV of the Code. This chapter deals with "General Exceptions". Section 107 of the Evidence Act provides that the burden of proving the existence of circumstances bringing a case within the general exceptions in the Penal Code is upon the accused person and the court shall presume the absence of such circumstances.

In the light of the provisions to which I have referred, the burden of proof under section 79 is upon the accused. Acknowledgedly, the quantum of proof with which this burden is to be discharged is on a balance of probabilities and not beyond a reasonable doubt.

My finding is that even on this lesser burden, not one of the accused has rebutted the presumption of the absence of circumstances enabling him to bring himself within the exception under section 79. The respective evidence of each was carefully considered by me. So was the respective evidence against each, one separate from the other.

Even without resort to the presumption in section 107 of the Evidence Act, there was ample evidence for me to hold as a fact that not one of the accused in his respective claimed belief that Kay consented, in good faith believed that she consented to his having sexual intercourse with her. If any of them held that belief, my finding is that he did so without due care and attention.

On corroboration, I am fully conscious that I, in the words of the Judicial Committee (in *Chiu Nang Hong* v. *Public Prosecutor*[6]), as "a judge sitting alone", must:

> "make it clear that he has the risk in question in his mind, but nevertheless is convinced by the evidence, even though uncorroborated, that the case against the accused is established beyond any reasonable doubt. No particular form of words is necessary for this purpose: what is necessary is that the judge's mind upon the matter should be clearly revealed."

I was quite clear of this risk and kept warning myself of it. On the two issues of consent and fear of hurt, the only two on which corroboration was desirable, I find Kay's evidence more than adequately corroborated. Her statement to Dr. Chua and her use of the Mandarin equivalent of the words "gang rape" in that statement within 14 hours after the events are to my mind adequate corroboration. The number of hours is not by itself important. Kay's complaint was made as speedily as could reasonably in the circumstances be expected of her.

I fully appreciate in the case of *Chiu Nang Hong*, Lord Donovan said that corroboration must be independent of the witness' testimony. However, a reading of the penultimate paragraph of that report will show that counsel for the Public Prosecutor was precluded from argument on the significant differences between the law and practice in England and the law and practice in Malaysia (where the Evidence Act, except for immaterial differences, is identical to that of Singapore) and the desirability of corroboration and as to what constitutes corroboration. This preclusion was because no argument on these issues was submitted to the then Malayan Court of Appeal whose views on the matter were, Lord Donovan said, indispensable to the Judicial Committee.

Our law is contained in section 159 of the Evidence Act which provides that a witness' testimony may be corroborated by any former statement made by such witness "... relating to the same fact at or about the time the fact took place or before any legal authority competent to investigate the fact". The expression "at or about the time the fact took place" is not to be limited in terms of hours or days. It is limited by the terms "first reasonable opportunity" or "as speedily as could reasonably be expected".

Further, section 159 must be read with section 8(2), Explanation 1 and Illustrations (j) and (k) to that section.

Having regard to Kay's youth and inexperience, her evidence of her relationship with her family and her ignorance of ways of making complaints to the police, I accept her reasons for not making a complaint before she saw Dr. Chua. I regard her statements to Dr. Chua as adequate corroboration under our law and going much further other than merely showing consistency.

In *R.* v. *Cummings*[7] the facts before the Court of Criminal Appeal in England on the time lapse between event and complaint was somewhat

similar to those in the case before me. The girl in that case worked on the land and lived in a camp or hostel for "land girls". The appellant, an ice-cream seller, had taken her out in his van somewhat late for a drive to see if they could get some pears in nearby farms. They found no pears. She alleged rape. She was brought back to the camp by the appellant. She did not complain to the warden of the camp, or to a woman welfare officer at the camp who was known to her and who that night had not yet gone to bed. Nor did she complain to the girls who were living in the same hut as she did. However, the next day, as early as she could, she went from the camp and complained to a woman whom she knew and who lived two miles away. The appellant's objection to admissibility on the ground of lateness of the complaint was dismissed by the Court of Criminal Appeal.

Having regard to English law, there was a case where the complaint was used to prove consistency. In my view, the principles stated by the Court of Criminal Appeal on time lapse are equally applicable for the purposes of corroboration under section 159 of our Evidence Act.

Kay also made a police report which was recorded in the diary at Tanglin Police Station later that day (September 5). Under section 159, this is not subject to any time constraint and is equally a corroboration of Kay's evidence.

Lastly, as against Teo, Ng and Yap, the conversations with Ah Leong in the hawker centre in the course of which one or more of the three of them, in the presence of the others, said that Kay screamed and cried, struggled and showed a little resistance in my mind also constitute corroboration as against these three accused persons though not against Sim.

It was argued that the absence of injury tended to show consent. That is true where an accused used physical force to get the victim to submit to sexual intercourse. There was no such allegation here. Kay was overawed into submission by the conduct of Teo, Sim and Ng, by the whereabouts of the events, a deserted quarry on a dark night and by the presence of three men outside the cabin when the fourth was alone with her. Before sex, each Teo, Sim and Ng threatened Kay with either or both, a beating or a call to the others to come up. Either of these threats to my mind was more than adequate to put Kay in fear of hurt to herself.

I do not regard these as "idle threats" as Sim's counsel chose to describe them. He referred to section 319 of the Penal Code. That section does not define hurt. It states what types of hurt constitute an element in the offences created in the sections that immediately follow it. Section 376(2) only requires "fear of hurt" and in my view the word "hurt" here bears its ordinary meaning and is not restricted to the types of hurt referred to in section 319.

In the light of the evidence before me, I find as a fact that Teo, Sim and Ng each put Kay in fear of hurt by their various respective utterances immediately prior to each having, without her consent, sexual intercourse with her.

In arriving at these conclusions, I was all the time conscious that as against Teo, I must keep out of my mind evidence of what transpired in Ah Boon's flat on the night of Monday, September 2. In answer to Yap's counsel's question, "Did Yap threaten to harm you?", Kay gave an unequivocable "no" in reply. I take this to mean that she did not regard anything that he said as inducing a fear of hurt. She was perhaps then quite exhausted, having already had sexual intercourse with three persons and twice with one of them.

In the light of these conclusions, I find Teo, Sim and Ng guilty of the respective charges against each of them. As far as Yap is concerned, I find him guilty of simple rape under section 375 of the Penal Code read with section 376(1).

Accused convicted as stated.

Solicitors: *C. Joseph; S.K. Chua & Peter Low; Joe Chellam.*